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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

WINE SCOUT INTERNATIONAL,) CASE NO. C 07 05930 JSW
 Plaintiff,) DEFENDANT'S NOTICE OF MOTION
 vs.) AND MOTION TO ENLARGE TIME
 PATRICIA CROWELL,) FOR THE FILING OF RESPONSIVE
 Defendant.) PLEADINGS AND MEMORANDUM OF
) POINTS AND AUTHORITIES IN
) SUPPORT THEREOF
) Date: Shortened Time
) Time: Set By the Court
) Courtroom: 2, 17th Floor
) Judge: Hon. Jeffrey S. White
)
) [Electronic digital signatures permitted]
)

TO PLAINTIFF, WINE SCOUT INTERNATIONAL, AND TO ITS ATTORNEY OF
 RECORD:

NOTICE IS HEREBY GIVEN that as soon as the matter may be heard by the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, in the courtroom of Hon. Jeffrey S. White, defendant will and hereby does move for an enlargement of time for the filing of responsive pleadings in this action to March 31, 2008.

The motion is brought on each of the six grounds set forth in the numbered and underlined headings of the accompanying Memorandum of Points and Authorities, as required by Civ. L.R. 6.3(a).

The motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support thereof, the Declarations of Andres N. Madrid, Patricia Crowell, and Stephen N. Hollman, and the pleadings and papers on file herein, and upon such other matters as may be presented to the Court.

DATED: February 23, 2007

BUSINESS & TECHNOLOGY LAW GROUP

By: /s/ Stephen N. Hollman
Stephen N. Hollman,
Attorneys for Defendant,
PATRICIA CROWELL

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Civ. L.R. 6-3(a), the reasons for the requested enlargement of time are as follows.

1. The First Case Management Conference Is Not Until April 25, 2008.

Pursuant to the Order Setting Case Management Conference and Requiring Joint Case Management Conference Statement signed by Your Honor on January 25, 2008 (ECF Document No. 7) (hereinafter referred to as the “Order”), there will be no Case Management Conference in this litigation for more than two months hence.

Despite the applicable provisions of Fed.R.Civ.P. Rules 4 and 5 and the explicit mandates in the Order (p. 1, ll. 20-23), requiring service of the Order by plaintiff on defendant and the filing with the Clerk of a Certificate reflecting such service in accordance with Civ. L.R. 5-6(a), no such service of the Order was ever made upon either defendant, her New York counsel, or her California counsel.¹

Making this wholesale absence to comply with the Order, defendant was never served with a copy of the pamphlet entitled “Dispute Resolution Procedures in the Northern District of California”.²

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^{1.} Madrid Decl., p. 2, ll. 11-13; Hollman Decl., p. 2, ll. 4-6 and ll. 17-19; Electronic Docket of the case reflecting the absence any certificate of Service, as required by Civ. L.R. 5-6(a).

² Madrid Decl., p. 2, ll. 14-16; Crowell Decl., p. 2, ll. 23-28 and p. 3, ll. 1-2.

1 2. Pending Action of the PTO.

2 As more fully set forth in the supporting Declarations of Patricia Crowell and Stephen N.
 3 Hollman, proactive action was taken by defendant with the PTO to amend her trademark
 4 application so as to eliminate any reference to International Class No 35 therein thereby mooted
 5 a number of the claims in the Complaint and ameliorating concerns of plaintiff, and action
 6 thereon by the PTO will not occur until after the close of the publication period of plaintiff's
 7 trademark application which will be approximately the end of March, 2008.³

8 3. Efforts Made To Obtain A Stipulation To The Time Change.

9 As more fully set forth in the Hollman Declaration, without even specifying a date for an
 10 enlargement of time for the filing of responsive pleadings, the door to consideration by plaintiff
 11 was shut tight by its counsel absent any consideration of the fact that the undersigned was new to
 12 the case and absent any consultation with the plaintiff.⁴

13 4. Substantial Harm Or Prejudice To Defendant; The Absence Of Same To Plaintiff.

14 It is conceded that the absence of service of the Order would not, standing alone, justify
 15 an enlargement of time for the filing of responsive pleadings. However, there is simply no
 16 justification whatsoever for plaintiff to not grant an enlargement for the filing of responsive
 17 pleadings beyond February 29, 2008 given the combination of facts that (i) there will be no Case
 18 Management Conference in this litigation for more than two months hence; (ii) the anticipated
 19 action from the PTO by approximately the end of March, 2008 that would moot many of the
 20 claims made in the Complaint and ameliorate concerns of plaintiff that defendant was
 21 encroaching on its business; (iii) the undersigned, as new counsel in this case, simply requires
 22 time to get up to speed; and (iv) the utter and complete absence of prejudice to plaintiff of it
 23 granting an enlargement to the end of March 2008 for the filing of responsive pleadings given
 24 both the Case Management Conference not occurring until April 25, 2008 and the anticipated
 25 action of the PTO by the end of March, 2008. As significantly, by forcing defendant to file

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 27 ^{3.} Crowell Decl., p. 3, ll. 7-10 and ll. 16-22; Hollman Decl. p. 2, ll. 7-8; Complaint (ECF Document No. 1,
 e.g., ¶¶ 7, 9, 15.

28 ^{4.} Hollman Decl. p. 2, ll. 1-28.

1 responsive pleadings by February 29, 2008, plaintiff both precludes the potential for defendant of
 2 filing a Fed.R.Civ.P. Rule 12 motion based upon the anticipated action of the PTO, and having
 3 claims in the Complaint mooted given the parameters of the very description of its business by it
 4 as set forth in its application to the PTO.⁵ Instead, this Rambo-like conduct by plaintiff⁶ serves
 5 only to visit prejudice upon defendant when plaintiff itself will suffer none.

6 4. This Motion Is Requested To Be Heard Upon Shortened Time.

7 The underlying dispute rests with the unjustified refusal of plaintiff to grant an
 8 enlargement of time to defendant for the filing of responsive pleadings absent any showable
 9 shred of prejudice being incurred by it, and the demonstrated detrimental prejudice to defendant
 10 by such denial, both as more fully set forth above.

11 5. Previous Time Modifications In this Case.

12 There has been only one prior time modification in this litigation (EFT Document No.
 13 9).⁷ This occurred at a time when defendant was attempting to precipitate a settlement with
 14 plaintiff,⁸ at a time when plaintiff had not complied with the Order,⁹ and at a time when
 15 defendant did not have California counsel.¹⁰

16 6. Effect The Requested Time Modification Would Have On The Case.

17 In light of the Order providing that there is no Case Management Conference until April
 18 25, 2008, an enlargement of time for the filing of responsive pleadings to March 31, 2008 would
 19 have no effect whatsoever on the date for the Case Management Conference. Even if defendant
 20 was to file a (i) Counterclaim on March 31, 2008, plaintiff would have to respond within 20 days
 21 thereafter – 5 days prior to the Case Management Conference; or (ii) Rule 12 Motion, the Court

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 23 ^{5.} Crowell Decl., p. 2, ll. 10-15.

24 ^{6.} Madrid Decl., p. 1, ll. 23-26 and p. 2, ll. 1-8; Crowell, Decl., p. 2, ll. 16-19 and ll. 23-28, and p. 3, ll. 1-2;
 Hollman Decl., p. 2, ll. 1-28 and p. 3, ll. 1-8.

25 ^{7.} Madrid Decl., p. 1, ll. 23-28.

26 ^{8.} Madrid Decl. p. 2, ll. 1-8; Crowell Decl., p. 2, ll. 23-28, and p. 3, ll. 1-2.

27 ^{9.} *supra*, p. 2, ll. 12-20.

28 ^{10.} Madrid Decl., p. 2, ll. 17-18; Crowell Decl., p. 3, ll. 11-15; Hollman Decl., p. 1, ll. 23-24.

1 has the ability to have the hearing thereon occur during its morning motion session on April 25,
 2 2008 by either the parties stipulating to, or the Court setting, a briefing schedule so that this
 3 would so occur.

4 Conclusion.

5 This Motion regrettably sheds no positive aura by way of an example of the good faith
 6 conduct of counsel expected by the Court. For any one or more of the reasons set forth above,
 7 from the appearance of new counsel, to the failure to comply with the Order, to the pending
 8 action of the PTO and its effect on mooting claims in the Complaint and ameliorating concerns
 9 of plaintiff, to the complete and utter lack of prejudice to plaintiff and the discernable prejudice
 10 to defendant, there should have been some measure of consideration given by plaintiff to a
 11 reasonable enlargement of time for the filing of responsive pleadings.

12 It is anticipated that plaintiff will argue that Mr. Madrid had the Complaint long enough.
 13 However, Mr. Madrid was **not** acting as counsel to defendant in this litigation and **never** so
 14 indicated to plaintiff's counsel.¹¹

15 There is no prejudice at all to plaintiff and no effect of the schedule set by the Court for
 16 this litigation if the requested enlargement of time for the filing of responsive pleadings to March
 17 31, 2008 is granted. Further, there is no benefit accorded to either of the parties or to the Court
 18 by having their respective counsel engage in what Senator Barak Obama termed in last
 19 Thursday's televised debate as a "silly season" of posturing.

20 The only party who would bear cognizable prejudice by having to file responsive
 21 pleadings on February 29, 2008 respectfully requests the Court to grant its Motion to enlarge the
 22 time for the filing of responsive pleadings to March 31, 2008.

23

Respectfully submitted,

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DATED: February 23, 2007

BUSINESS & TECHNOLOGY LAW GROUP

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By: /s/ Stephen N. Hollman
 Stephen N. Hollman,
 Attorneys for Defendant,
 PATRICIA CROWELL

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28 ^{11.} Madrid Decl., p. 2, ll. 9-10.

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5. Prior to January 28, 2008, defendant sought to speak directly with plaintiff regarding a resolution of its claims. Plaintiff's counsel communicated with me by E-Mail refusing that attempt to resolve the claims by stating:

Andy:

Spoke with my client. He's not inclined to speak with Ms. Crowell as he is not prepared to settle the matter absent her cessation of use of the mark. However, if your client is willing to commit to ceasing use of the mark, our client will agree to allow your client a six month phase out and will waive all damage and attorneys' fees claims. Otherwise, my client is prepared to proceed with the litigation and will seek all available damages and fees.

9 6. I neither appeared as counsel for defendant in this litigation nor had ever advised
10 Mr. Gerien that I would appear as counsel on behalf of defendant in this litigation.

11 7. At no time in the period during which I was in communication with Mr. Gerien
12 did I ever receive from him a copy of the Order Setting Case Management Conference and
13 Requiring Joint Case Management Conference Statement signed by Judge White.

14 8. At no time in the period during which I was in communication with Mr. Gerien
15 did I ever receive from him a copy of a pamphlet entitled "Dispute Resolution Procedures in the
16 Northern District of California."

17 9. Upon information and belief, Ms. Crowell retained California counsel, Mr.
18 Stephen N. Hollman, on or about February 19, 2008 to represent her in this litigation.

19 I declare under penalty of perjury under the laws of the State of New York and 28 U.S.C.
20 § 1746 that the foregoing is true and correct, except as to those matters that are stated to be on
21 information and belief, and as to such matters I believe them to be true.

22 This Declaration was signed at New York, New York.

23 DATED: February 23, 2007

/s/ *Andres N. Madrid*

Andres N. Madrid

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28

CASE NO. 07 05930 JSW
DECL. OF ANDRES N. MADRID IN
SUPP. OF DEFT.'S MOT. TO EN-
LARGE TIME FOR RESP. PLDGS.

1 STEPHEN N. HOLLMAN, ESQ., STATE BAR NO. 55219
 2 Business & Technology Law Group
 3 160 W. Santa Clara Street, Suite 1050
 4 San Jose, CA 95113
 5 Telephone: (408) 282-1949
 6 Facsimile: (408) 275-9930
 7 E-Mail: wsc@businessandtechnologylawgroup.com

8 Attorneys for Defendant,
 9 PATRICIA CROWELL
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10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 WINE SCOUT INTERNATIONAL,)	CASE NO. C 07 05930 JSW
12 Plaintiff,)	DECLARATION OF
13 vs.)	PATRICIA CROWELL IN SUPPORT OF
14 PATRICIA CROWELL,)	DEFENDANT'S MOTION TO
15 Defendant.)	ENLARGE TIME FOR THE FILING OF
)	RESPONSIVE PLEADINGS
)	[Electronic digital signatures permitted]
16)	
17)	

18 I, PATRICIA CROWELL, declare as follows:

- 19 1. I am the defendant who is named in the Complaint in this litigation.
- 20 2. I make this Declaration of my own personal knowledge, and, if called as a
 21 witness, I could competently testify to the matters herein.
- 22 3. The nature of my business under the mark "The Wine Scout" is to discover wine
 23 tasting adventures along with great tasting wines, discussions of wine trips including where to
 24 go, what to do, restaurants, hotels, wineries and vineyards, wine festivals and other local sights –
 25 all within podcasts that are available to visitors on my website with the registered domain name
 26 of "thewinescout.com" and through other sites and applications (e.g., iTunes) on the Internet.
- 27 4. I engaged the services of Andres Madrid to apply with the United States Patent &
 28 Trademark Office (hereinafter referred to as the "PTO") for a registration of the trademark "The

1 Wine Scout" in connection with the business described in Paragraph 3 above, and he did so on or
 2 about January 17, 2007. That application, to which the PTO assigned Serial No. 77084749, was
 3 for use in International Class No. 9 ("downloadable podcasts relating to wines and restaurants
 4 distributed by means of a global computer network"), International Class No. 35 ("promotional
 5 services, namely, advertising and marketing for goods and services related to wine, online
 6 ordering and retail store services in the field of wine, wine accessories, and other general
 7 merchandise related to wine"), and International Class No. 41 ("conducting educational programs
 8 relating to wine; educational and entertainment services, namely, podcast programs relating to
 9 wine; podcast travel shows relating to wine; online journals, namely, blogs featuring wine").

10 5. I subsequently became informed and believe that on or about June 6, 2007,
 11 plaintiff filed with the PTO an application to register the mark "Wine Scout" in International
 12 Class No. 35 ("mail order catalog services featuring wine; online retail store services featuring
 13 wine; providing information and advice to mail order catalog and online retail store customers
 14 concerning the purchase of wine"). I am informed and believe that the PTO assigned to that
 15 application Serial No. 77199035.

16 6. On or about November 28, 2007, I recall subsequently being advised by Mr.
 17 Madrid that plaintiff had commenced this litigation and that I had two days within which to
 18 discontinue all use of my mark "The Wine Scout" or that plaintiff would move forward with this
 19 litigation.

20 7. In the time following my receipt of a copy of the Complaint from Mr. Madrid, it
 21 became apparent that any documents relating to this litigation sent out by plaintiff's counsel
 22 through the mail for service upon me were never received by me.

23 8. After Mr. Madrid negotiated an extension of time for me to respond to the
 24 Complaint, I requested of Mr. Madrid that he convey to plaintiff's counsel my desire to speak
 25 directly with plaintiff regarding a mutually acceptable resolution of its claims. My desire to do
 26 seek such a resolution was done in the absence of any knowledge or understanding by me of the
 27 Court's requirement for alternative dispute resolution in cases brought before it of which my
 28 California counsel, Stephen Hollman so advised me only within the past day or two. That

1 attempt by me was wholly rebuffed when Mr. Madrid was advised by plaintiff's counsel that his
 2 client was not prepared to settle the matter absent my total cessation of the use of my mark.

3 9. Although my sincere attempt to resolve this litigation directly with the plaintiff
 4 was rejected outright, the application for my trademark was approved by the PTO and noticed for
 5 publication. I am further informed and believe that the application of plaintiff to register its
 6 trademark was suspended by the PTO.

7 10. In an effort to address the claims in the Complaint and the concerns of plaintiff,
 8 Mr. Madrid, with my consent, submitted to the PTO an amendment of my application to register
 9 "The Wine Scout", which the PTO had previously approved, by deleting International Class No.
 10 35 – the sole and only class in which plaintiff is seeking its trademark registration.

11 11. On or about February 18, 2008, I engaged Stephen N. Hollman of San Jose,
 12 California to represent me in this litigation. In a telephone conference he had with plaintiff's
 13 counsel on February 20, 2008, Mr. Hollman told me that he was informed that I had to respond to
 14 the Complaint within approximately one week unless I discontinued all use of my mark in any
 15 connection with wine.

16 12. I am informed and believe that no formal action can be taken by the PTO on the
 17 amendment of my application to register "The Wine Scout" by deleting International Class No.
 18 35 – the sole and only class in which plaintiff is seeking its trademark registration – until several
 19 days after the publication period of my mark expires and that such action by the PTO will be
 20 toward the end of March 2008. If that amendment is approved, and I am informed and believe
 21 this to be highly likely, then I am further informed and believe that many of the claims made by
 22 plaintiff in its Complaint will simply become moot.

23 I declare under penalty of perjury under the laws of the State of New York and 28 U.S.C.
 24 § 1746 that the foregoing is true and correct, except as to those matters that are stated to be on
 25 information and belief, and as to such matters I believe them to be true.

26 This Declaration was signed at New York, New York.

27 DATED: February 23, 2007

/s/ Patricia Crowell

Patricia Crowell

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8 Attorneys for Defendant,
 9 PATRICIA CROWELL
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1 5. In the February 21, 2008 telephone conference with plaintiff's counsel, I pointed
 2 out to him, among other things, that (i) I was very new to the case by only a couple of days and
 3 thereby not wholly familiar with all of the background facts; (ii) there was no Case Management
 4 Conference in this litigation until April 25, 2008; (iii) no copy of the Court's Order Setting Case
 5 Management Conference and Requiring Joint Case Management Conference Statement signed by
 6 Your Honor on January 25, 2008 had ever been served on defendant or sent to Mr. Madrid;
 7 (iv) defendant's trademark registration had been amended to delete International Class No. 35
 8 and that should ameliorate many of the claims in the Complaint and many of plaintiff's concerns;
 9 (v) absent even my specifying a date, I needed time to evaluate the position of defendant
 10 generally and in light of the anticipated action of the PTO favorably approving the amendment to
 11 defendant's trademark registration deleting and thereby mooted many of the claims in the
 12 Complaint, and no prejudice would be incurred by plaintiff in light of there being no Case
 13 Management Conference for more than two months; and (vi) proposed that parties commence
 14 ADR prior to the April 25, 2008 Case Management Conference once the anticipated favorable
 15 action of the PTO occurred deleting International Class No. 35 from the defendant's trademark
 16 application.

17 6. The responses from plaintiff's counsel to me absent any consultation by him with
 18 his client were that (i) a copy of the Court's Order Setting Case Management Conference and
 19 Requiring Joint Case Management Conference Statement signed by Your Honor on January 25,
 20 2008 had been sent to Mr. Madrid; (ii) defendant had until February 29, 2008 to file her
 21 responsive pleadings and there would be no further continuance; and (iii) there would be no ADR
 22 in this litigation.

23 7. In reply, I informed plaintiff's counsel that (i) I should be compelled to seek from
 24 the Court by motion on shortened time an enlargement of the time for defendant to file
 25 responsive pleadings; (ii) in light of the of the April 25, 2008 Case Management Conference his
 26 client would not be prejudiced; and (iii) filing such a motion with the Court would be a bad way
 27 to start off this litigation. Plaintiff's counsel responded that I should do whatever I had to do, and
 28 the previously stated date of February 29, 2008 for responsive pleadings remained firm.

1 8. On February 22, 2008, I received an E-Mail from plaintiff's counsel stating:

2 I have conferred with my client concerning our conversation yesterday,
3 and in light of your posturing, I want to advise you that the prior offer of
4 settlement [*plaintiff's demand that defendant discontinue all use of her*
5 *trademark of plaintiff will move forward with the litigation*] is off the
6 table. If your client wishes to settle this matter, my client will require a
7 payment of its attorneys' fees as well as cessation of use.

8 We look forward to responding to your motion for an extension of time to
9 answer. In light of the fact that Andy received a copy of the complaint
10 from us on November 27, 2007, I believe that our stipulation allowing Ms.
11 Crowell until next week to respond is more than generous and any claims
12 of substantial harm or prejudice as required under Local Rule 6-3(a)(3)
13 will be completely without merit.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct, except as to those matters that are stated to be on information and
16 belief, and as to such matters I believe them to be true.

17 12. This Declaration was signed at San Jose, California.

18 DATED: February 23, 2007

19 /s/ Stephen N. Hollman

20 Stephen N. Hollman

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 WINE SCOUT INTERNATIONAL,) CASE NO. C 07 05930 JSW
12 Plaintiff,)
13 vs.) [PROPOSED] ORDER RE
14 PATRICIA CROWELL,) DEFENDANT'S MOTION TO
15 Defendant.) ENLARGE TIME FOR THE FILING OF
16) RESPONSIVE PLEADINGS
17)
18) [Electronic digital signatures permitted]
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

The motion of defendant, Patricia Crowell, for an order enlarging the time for the filing of responsive pleadings came before the Court on submissions by Stephen N. Hollman, counsel for defendant, and J. Scott Gerien, counsel for plaintiff.

After consideration of the submissions ad arguments of counsel, and all other matters presented to and reviewed by the Court,

IT IS HEREBY ORDERED that defendant's motion for an order enlarging the time for the filing of responsive pleadings is GRANTED, and defendant will file responsive pleadings in this action on or before March 31, 2008.

DATED: February __, 2008

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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February 25, 2008

Hon. Jeffrey S. White
United States District Judge
U. S. District Court for the No. Dist. of Cal.
Courtroom 2, Seventeenth Floor
450 Golden Gate Avenue
San Francisco, CA 94102

***RE: Wine Scout International vs. Patricia Crowell
USDC, N.D. Cal., Case No. C-07-05930 JSW
CHAMBERS COPIES AND REQUEST FOR SHORTENED TIME***

Dear Judge White:

Enclosed are Chambers Copies of the following pleadings that were electronically filed this morning in the above-referenced matter:

1. Defendant's Notice of Motion and Motion to Enlarge Time for the Filing of Responsive Pleadings and Memorandum of Points and Authorities in Support Thereof;
2. Declaration of Andres N. Madrid in Support of Defendant's Motion to Enlarge Time for the Filing of Responsive Pleadings;
3. Declaration of Patricia Crowell in Support of Defendant's Motion to Enlarge Time for the Filing of Responsive Pleadings;
4. Declaration of Stephen N. Hollman in Support of Defendant's Motion to Enlarge Time for the Filing of Responsive Pleadings; and
5. [Proposed] Order.

Defendant hereby requests that the Court rule on the Motion referenced above on shortened time because plaintiff has set February 29, 2008 at the non-negotiable date on which responsive pleadings are due.

Hon. Jeffrey S. White
February 25, 2008
Page 2

During a telephone conference with plaintiff's counsel on February 21, 2008, I advised him of defendant's intent to file the Motion referenced above. He acknowledges that I so notified him in the text of an E-Mail from him to me that is quoted on p. 3, ll. 1-9 of the Declaration of Stephen N. Hollman referenced above, and indicates he will apparently file an opposition thereto.

By the time the Motion referenced above and the anticipated opposition from plaintiff are considered and ruled upon by the Court, it is likely that February 29, 2008 will have come and gone. As such, some type of enlargement of time will be necessary in any event.

For all of the good and sufficient reasons set forth in pleadings referenced above, defendant respectfully requests that her Motion be granted and that the Court issue an Order enlarging the time for her to file responsive pleadings in this action to March 31, 2008.

I hereby certify under the penalty of perjury that in compliance with Civ. L.R. 6.3(b) and General Order 45, IX.A, a copy of this letter and each of the documents referenced above were seemed to have been sent to plaintiff's counsel.

Respectfully submitted,

/s/ Stephen N. Hollman

Stephen N. Hollman

Enclosures (as stated)